UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VICTOR TORRES TRINIDAD,

Plaintiff,

v.

CAP 111 ENTERPRISES LLC, d/b/a ARMONK HOUSE; and CONNIE PETROVICH,

Defendants.

Civil Action No: 7:17-cv-01986

COMPLAINT
(Jury Trial Demanded)

Plaintiff, VICTOR TORRES TRINIDAD, by and through his attorney, Seham, Seham, Meltz & Petersen, LLP, files this Complaint against Defendants CAP 111 ENTERPRISES LLC, d/b/a ARMONK HOUSE ("Defendant Cap 111") and CONNIE PETROVICH ("Defendant Petrovich"), and states as follows:

NATURE OF THE CASE

1. Plaintiff alleges that pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. §§201-219) (hereinafter referred to as the "Act" or "FLSA"), he is entitled to recover from the Defendants: (1) unpaid minimum wages; (2) unpaid overtime; (3) liquidated damages; (4) prejudgment and post-judgment interest; and (5) attorneys' fees and costs.

2. Plaintiff further alleges that pursuant to New York State Labor Law §§190 *et seq.*, §§ 650 *et seq.* ("NYLL"), and New York State Department of Labor Regulations, he is entitled to recover from Defendants: (1) unpaid minimum wages; (2) unpaid overtime; (3) liquidated damages; (4) prejudgment and post-judgment interest; and (5) attorneys' fees and costs.

PARTIES

3. Plaintiff is an individual who, at all material times referenced herein, resided in the State of New York.

4. Plaintiff was employed by the Defendant Cap 111 Enterprises LLC, d/b/a/Armonk House from April 2015 until May 2016.

5. Plaintiff, at all material times referenced herein, was managed by Defendant Petrovich.

6. Defendant Cap 111 is an active, domestic limited liability company organized under the laws of the State of New York, and d/b/a Armonk House, a restaurant located at 111 Bedford Road, Armonk, NY 10504.

7. Defendant Cap 111 constitutes an "enterprise" within the meaning of section 3(r)(1) of the Act. Said enterprise, at all times hereinafter mentioned, had employees engaged in commerce or in the production of goods for commerce, or had employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and has an annual gross volume of sales made or business done in an amount not less than $500,000.00. Therefore, the Plaintiff has been employed in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of section 3(s)(1) of the Act, as amended.

8. Upon information and belief, Defendant Cap 111 was at all relevant times herein in active control and management in relation to Plaintiff, and was thus an employer of Plaintiff, within the meaning of section 203(d) of the Act.

9. Upon information and belief, Defendant Petrovich is an owner, officer, director, member and/or managing agent of Defendant Cap 111.

10. Upon information and belief, Defendant Petrovich was, at all times, in active control and management of Defendant Cap 111, regulated the employment of all persons employed by Defendant Cap 111, and acted directly and indirectly in the interest of Defendant Cap 111, in relation to said employees, and was thus an employer of Plaintiff, within the meaning of section 203(d) of the Act.

JURISDICTION AND VENUE

11. Jurisdiction is conferred on the Court by 28 U.S.C. §1337, giving the District Court original jurisdiction of "any civil action or proceeding arising under any Act of Congress regulating commerce," without regard to the citizenship of the parties or the sum or value in controversy, by 28 U.S.C. §1331 giving the District Court original jurisdiction of "all civil actions arising under the … laws … of the United States," and by section 16(b) of the Act (29 U.S.C. §216(b)).

12. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367, in that the New York State law claims are so related to Plaintiffs' FLSA claims as to form the same case or controversy under Article III of the United States Constitution.

13. Venue in this Court is proper under 28 U.S.C. § 1391, because Defendants maintain their principal place of business in, do business in, and accordingly reside in, this District.

14. Venue is also proper within this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred within this District.

FACTS

15. At all relevant times, each Defendant was an "employer" engaged in interstate "commerce" and/or in the "production of goods" for "commerce," within the meaning of 29 U.S.C. § 203(d).

16. At all relevant times, each Defendant was an "employer" within the meaning of Section 190 of the NYLL.

17. At all relevant times, Plaintiff was an "employee" of the Defendants, within the meaning of 29 U.S.C. § 203(e)(1).

18. At all relevant times, each Plaintiff was an "employee" of the Defendants, within the meaning of Section 190 of the NYLL.

19. At all times herein, upon information and belief, and during the course of Plaintiff's employment, the Defendants failed to compensate Plaintiff in accordance with the FLSA and the NYLL.

Wage Violations

20. Plaintiff was hired by and worked for Defendants from April 2015 through May 2016.

21. From April 2015 to November 2015, Plaintiff performed construction and carpentry work for Defendants was compensated at a fixed rate of $1,200 per week.

22. During the period between April 2015 and November 2015, Plaintiff worked an average of 12-15 hours per day, and during this time Plaintiff generally worked six days per week except that once per month Plaintiff worked seven days per week.

23. During the period between April 2015 and November 2015, Plaintiff was not compensated by Defendants for his straight time wages in the aggregate amount of $3,600

during the final three weeks that he performed construction and carpentry work for Defendants.

24. During the period between April 2015 and November 2015, Plaintiff worked approximately 32 hours of overtime per week for which he was not compensated.

25. Using a conservative estimate of 72 hours worked per week, Plaintiff was paid a regular rate of $16.67 per hour during his 32 weeks of construction work.

26. During the period between April 2015 and November 2015, Plaintiff was not compensated by Defendants for his overtime wages in the aggregate amount of $8,535.04.

27. Commencing on or about November 9, 2015, Plaintiff was employed by Defendants at the Armonk House performing manual work and preparing salads.

28. Between on or about November 9, 2016 and January, 2016, Plaintiff worked for Defendants 12 hours per day on Monday through Thursday, and 13.25 hours per day on Fridays and Saturdays.

29. Between February 2016 and May 15, 2016, Plaintiff worked approximately 60 hours per week.

30. Between November 9 and November 30, 2015, Plaintiff was compensated at a rate of $13 per hour.

31. Between November 30, 2015 and May 15, 2016, Plaintiff was compensated at a rate of $14 per hour.

32. During the period between November 9, 2015 and May 15, 2016, Plaintiff was not compensated by Defendants for his overtime wages in the aggregate amount of $14,838.75.

33. Defendants failed and refused to compensate Plaintiff for any of his work hours in excess of forty (40) hours per week at rates not less than one and one-half (1.5) times the regular rates at which he was employed, as required by the FLSA, NYLL and supporting New York State Department of Labor Regulations.

34. Upon information and belief, Defendants knew of, and/or showed reckless disregard for, the practices by which the Plaintiff was not paid overtime pay.

35. Upon information and belief, Defendants knew that the nonpayment would economically injure the Plaintiff and that such nonpayment violated the FLSA, NYLL and New York State Department of Labor Regulations.

36. During the entire period of Plaintiff's employment, the Defendants engaged in willful violation of the overtime pay requirements of Plaintiff, in violation of the FLSA, NYLL and New York State Department of Labor Regulations..

37. Plaintiff is owed unpaid minimum wages and overtime pay totaling approximately $26,973.79, and Plaintiffs are entitled to recovery of such amounts plus liquidated damages, prejudgment interest, costs, and reasonable attorneys' fees.

FIRST CAUSE OF ACTION
(FLSA Overtime and Minimum Wage Claims Against All Defendants)

38. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 37 of this Complaint as if fully set forth herein.

39. During Plaintiff's employment with the Defendants, the Defendants willfully failed to pay Plaintiffs' minimum wages due under the FLSA.

40. During Plaintiff's employment with the Defendants, the Defendants willfully failed to pay Plaintiffs' overtime wages due under the FLSA.

41. The Defendants failure to pay overtime and minimum wage rates to Plaintiff constitutes a violation under the provisions of the FLSA as provided in 29 U.S.C. §§ 207, 216, as a result of which there is due and owing from the Defendants to Plaintiff approximately $26,973.79 in back wages plus an additional equal amount as liquidated damages. An additional sum, to be determined, is due and owing from the Defendants for Plaintiff's reasonable attorney's fees.

42. Defendants' acts and/or omissions in failing, refusing or neglecting to pay Plaintiff's minimum wages and overtime compensation were not made in good faith. Defendants are therefore required to pay Plaintiff 100% liquidated damages. 29 U.S.C. § 216(b).

43. As a consequence of Defendants' willful violation of Plaintiff's rights under the FLSA, Plaintiff is entitled to recover from Defendants, jointly and severally, their unpaid overtime wages for work actually performed, an additional equal amount in liquidated damages, costs, and reasonable attorneys' fees pursuant to FLSA § 16(b), 29 U.S.C. § 216(b).

44. Plaintiff is entitled to recover on his FLSA overtime claims an amount to be determined at trial or by the Court, plus an additional equal amount as liquidated damages, prejudgment interest, post-judgment interest, and reasonable attorneys' fees, costs and disbursements incurred in this action.

SECOND CAUSE OF ACTION
(NYLL Overtime and Minimum Wage Claims Against All Defendants)

45. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 44 of this Complaint as if fully set forth herein.

46. During Plaintiff's employment with the Defendants, the Defendants willfully failed to pay Plaintiffs' minimum wages due under the NYLL.

47. During Plaintiff's employment with the Defendants, the Defendants willfully failed to pay Plaintiffs' overtime wages due under the NYLL.

48. The Defendants failure to pay overtime and minimum wage rates to Plaintiff constitutes a violation under the provisions of the NYLL, as a result of which there is due and owing from the Defendants to Plaintiff approximately $26,973.79 in back wages plus an additional equal amount as liquidated damages. An additional sum, to be determined, is due and owing from the Defendants for Plaintiff's reasonable attorney's fees.

49. At all times relevant to this cause of action, Defendants employed Plaintiff within the meaning of the NYLL and supporting New York State Department of Labor Regulations.

50. Plaintiff regularly performed work for the Defendants in excess of forty (40) hours per week.

51. Defendants failed, refused and/or neglected to pay Plaintiff overtime compensation for his work hours in excess of forty (40) hours per week at rates not less than one and one-half (1.5) times the regular rates at which he was employed, as required by the NYLL and the supporting New York State Department of Labor Regulations.

52. As a consequence of Defendants' violation of Plaintiff's rights under the NYLL and supporting New York State Department of Labor Regulations, Plaintiff is entitled to recover from Defendants, jointly and severally, the following: (a) unpaid minimum wages; (b) unpaid overtime wages calculated at the rate of not less than one and one-half (1.5) times the regular rate for all hours worked over forty (40) hours per week; (c) an additional amount as liquidated damages equal to one hundred percent (100%) of the total amount of unpaid overtime wages, pursuant to NYLL § 198(1-a); (d) prejudgment interest as required under the New York Civil

Practice Law and Rules; and (e) reasonable attorneys' fees, costs and disbursements incurred in this action.

53. Plaintiff is entitled to recover on their NYLL overtime claims an amount to be determined at trial or by the Court, plus an additional equal amount as liquidated damages, prejudgment interest, post-judgment interest, and reasonable attorneys' fees, costs and disbursements incurred in this action.

RELIEF DEMANDED

WHEREFORE, cause having been shown, Plaintiff prays for judgment jointly and severally against Defendants as follows:

1. On the First Cause of Action (FLSA overtime and minimum wages), damages in the amount of $26,973.79, or in an amount to be determined at trial or by the Court, plus an additional equal amount as liquidated damages, prejudgment interest, post-judgment interest, and reasonable attorneys' fees, costs and disbursements incurred in this action;

2. On the Second Cause of Action (NYLL overtime and minimum wages), damages in the amount of $26,973.79, or in an amount to be determined at trial or by the Court, plus an additional equal amount as liquidated damages, prejudgment interest, post-judgment interest, and reasonable attorneys' fees, costs and disbursements incurred in this action; and

3. Granting such additional relief as the Court deems proper and just.

JURY TRIAL DEMAND

Pursuant to Fed. R. Civ. P. 38, Plaintiff hereby demand a trial by jury as to all claims to which he is entitled.

Dated: March 20, 2017

_/s/George Diamantopoulos_______

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